

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAULA REGINA VILLA,

Petitioner,

vs.

GWENDOLYN MITCHELL, *et al.*,

Respondents.

No. 2:02-cv-01301-JKS-JFM

ORDER DENYING
CERTIFICATE OF APPEALABILITY

Petitioner is a state prisoner proceeding *pro se* with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 17, 2006, judgment was entered in this court denying the petition. On May 11, 2006, Petitioner filed a notice of appeal. Before Petitioner can appeal this decision, a Certificate of Appealability must issue. 28 U.S.C. § 2253(c); Federal Rule of Appellate Procedure 22(b).

Federal Rule of Appellate Procedure 22(b) requires the district court judge who rendered a judgment denying such petition to “either issue a certificate of probable cause or state the reasons why such a certificate should not issue.”

The timely filing of a notice of appeal is a jurisdictional requirement. *Browder v. Director, Dept. of Corrections of Illinois*, 434 U.S. 257, 264 (1978). Here, the time limit for filing a notice of appeal following entry of judgment is thirty days. *See* Fed. R. App. P. 4(a). Petitioner’s notice of appeal in this action was filed more than thirty days after entry of judgment.

The United States Court of Appeals for the Ninth Circuit has held that the issuance of a certificate of probable cause cannot vest the court of appeals with jurisdiction if jurisdiction is not proper in that court. *Hayward v. Britt*, 572 F.2d 1324, 1325 (9th Cir. 1978). The rationale of *Hayward* applies with equal force to a Certificate of Appealability. For these reasons, the court declines to issue a certificate of appealability; any further request for a Certificate of

Appealability must be addressed to the Court of Appeals. *See* Fed. R. App. P. 22(b); Ninth Circuit R. 22-1.

IT IS SO ORDERED.

Dated: January 15, 2008

s/ James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge